

236709

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

JUL 27 2011

**Part of
Public Record**

STB Ex Parte No. 711

**PETITION FOR RULEMAKING TO ADOPT
REVISED COMPETITIVE SWITCHING RULES**

**REPLY OF CSX TRANSPORTATION, INC. IN OPPOSITION TO THE NATIONAL
INDUSTRIAL TRANSPORTATION LEAGUE'S PETITION FOR RULEMAKING**

Peter J. Shudtz
Paul R. Hitchcock
John P. Patelli
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

G. Paul Moates
Paul A. Hemmersbaugh
Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for CSX Transportation, Inc.

July 27, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 711

**PETITION FOR RULEMAKING TO ADOPT
REVISED COMPETITIVE SWITCHING RULES**

**REPLY OF CSX TRANSPORTATION, INC. IN OPPOSITION TO THE NATIONAL
INDUSTRIAL TRANSPORTATION LEAGUE'S PETITION FOR RULEMAKING.**

CSX Transportation, Inc. ("CSXT") opposes the Petition for Rulemaking of the National Industrial Transportation League ("NITL") filed on July 7, 2011 in this docket (the "NITL Petition").¹ CSXT joins in the Reply of the Association of American Railroads and files this additional Reply in opposition to the NITL Petition.

The Board has just received final comments in STB Ex Parte No. 705, an extensive proceeding convened to consider numerous aspects of rail competition law, rules, regulations, and policies, including law and rules governing forced access, forced switching, the bottleneck rule, through routes and a number of other matters. In that proceeding, the Board received multiple rounds of extensive comments from more than 800 parties and held a two-day public hearing concerning the various issues and questions surrounding rail competition and competition policies. The proper, orderly and appropriate course at this juncture is for the Board to thoroughly review and consider the comments, views, proposals, and evidence submitted by

¹ CSXT incorporates by reference, as if set forth in full herein, all of its comments, submissions, and testimony in *STB Ex Parte No. 705, "Competition in the Railroad Industry,"* including but not necessarily limited to: Opening Comments of CSX Transportation, Inc. (Apr. 12, 2011); Reply Comments of CSX Transportation, Inc. (May 27, 2011); the testimony of Michael Ward; and Supplemental Comments of CSX Transportation, Inc. (July 25, 2011)

parties to Ex Parte 705, and then—based on judicious review of the full record—make considered judgments about whether further examination of existing policies is warranted.

The NITL Petition, however, seeks to short-circuit the *Ex Parte 705* process by requesting that the Board hastily convene a new rulemaking to consider changes to its existing rules and standards governing inter-carrier switching. This premature request (filed well before final supplemental comments were due in Ex Parte 705) would have the Board race headlong into a rulemaking to consider a radical and incomplete proposal for imposing a new forced switching regime, before the Board has adequate time to consider and weigh the evidence concerning a range of competition issues and proposals submitted in Ex Parte 705. Such a rush to impose incomplete and ill-considered new forced access regulation prior to full consideration of the record and evidence that the Board has just received in Ex Parte 705 would deny it the full benefit of the evidence submitted in that proceeding and could very well result in unsound or unwise policy decisions.

Not only is the NITL Petition premature and undeveloped, it is not supported by the evidence submitted in Ex Parte 705. The NITL Petition offers a selective and distorted depiction of the comments and evidence presented in that proceeding, focusing entirely on aspects of the comments of a subset of shippers. While certain shipper groups complained about what they deem insufficient rail competition, they offered little to no evidentiary support for their complaints and proposals for forced access and other regulatory intervention to manufacture additional direct rail “competition.” Rail carriers, on the other hand, submitted actual evidence concerning the robust state of surface transportation competition; the lack of need or justification for forced access regulation as a matter of policy and economics; and the operational, service, and efficiency problems and reduced rail system investment that could result from the imposition

of new forced access regulation. The overwhelming weight of the evidence submitted in *Ex Parte 705* demonstrates that: (i) existing, balanced rail competition law, policies, and regulations are working well and as Congress intended; and that (ii) changes to impose more forced access – including the sort of forced switching proposed in the NITL Petition – is both unnecessary and would have negative effects on rail carriers, the freight rail network, and rail shippers and customers.

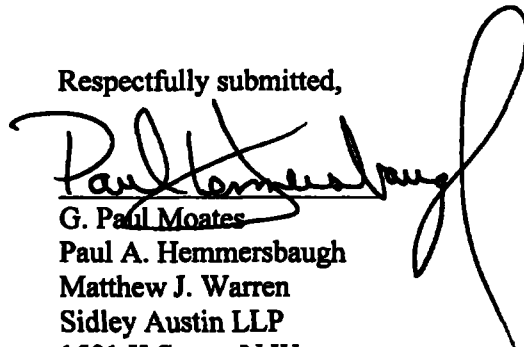
The Board should reject the NITL Petition as premature, unsupported by the record and the evidence, unnecessary, and unwise.

CONCLUSION

CSXT opposes the ill-considered NITL Petition, and urges the Board to reject the Petition and its request that the Board open a rulemaking proceeding.

Peter J. Shudtz
Paul R. Hitchcock
John P. Patelli
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Respectfully submitted,



G. Paul Moates
Paul A. Hemmersbaugh
Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for CSX Transportation, Inc.

Dated: July 27, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 2011, I caused copies of the foregoing Reply of CSX Transportation, Inc. in Opposition to the National Industrial Transportation League's Petition for Rulemaking to be served by first-class mail or more expeditious means on all Parties of Record in STB Ex Parte No. 711.

A handwritten signature in black ink, appearing to read 'Eva Mozena Brandon', written over a horizontal line.

Eva Mozena Brandon